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Of Counsel
William H. DuRoss, III
Matthew L. Leibowitz

August 18, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

RECEIVED

AUG 18 1994

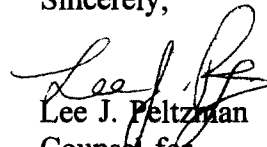
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket No. 94-60
Counterproposal to Duncan, Arizona, Rulemaking

Dear Mr. Caton:

Transmitted herewith, on behalf of Acme Enterprises, is an original and four (4) copies of its Counterproposal in the above-referenced rulemaking. Please contact the undersigned should questions arise regarding this filing.

Sincerely,



Lee J. Peltzman
Counsel for
ACME ENTERPRISES

Enclosure

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM DOCKET NO. 94-60
FM Broadcast Stations) RM-8455
(Duncan, Arizona, and Reserve, New Mexico))

RECEIVED

AUG 18 1994

To: Chief, Allocations Branch
Mass Media Bureau

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

COUNTERPROPOSAL

Acme Enterprises ("Acme"), by its attorney, hereby submits its counterproposal in the above-captioned rulemaking proceeding. Acme believes that the Commission should allot Channel 264C3 to Reserve, New Mexico, as that community's first transmission service. In support of its proposal, Acme states the following:

1. By Notice of Proposed Rulemaking, DA 94-612, released June 28, 1994, the Commission proposed the allotment of Channel 264A to Duncan, Arizona. However, the allotment of Channel 264A at Duncan will preclude the allotment of Channel 264C3 at Reserve, New Mexico. Aside from that conflict, the allotment of Channel 264C3 at Reserve can be made in compliance with the Commission's minimum distant separation rules (with a site restriction of 6.8 kilometers) as well as the Commission's community coverage rules. See attached Engineering Statement.

2. Reserve is a significant community and warrants its own broadcast station. It is the county seat of Catron County, New Mexico. According to the 1990 census report, the population of Reserve was 439 persons. Currently, Reserve lacks any broadcast station. In fact, there are no stations at all licensed to Catron County. Because of the rural nature of the area

surrounding Reserve, Acme is desirous of providing a wide coverage area service to Reserve and does not have any interest in the limited coverage which would be supplied by a lesser power channel for the community of Reserve.

3. In comparing the relative needs of Reserve and Duncan for their first transmission service, the Commission must utilize its comparative criteria as set forth in the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982). In that decision, the Commission adopted certain priorities to be used when comparing proposals:

- (a) First full-time aural service
- (b) Second full-time aural service
- (c) First local service
- (d) Other public interest matters

[Co-equal weight given to priorities (b) and (c).]

4. Both Reserve and Duncan each lack a first local transmission service. However, Reserve presently does not receive any full-time aural service. The closest licensed station (Station KQAZ) is over 60 kilometers distant. Therefore, the Commission will fulfill priorities (a) and (c) by allotting Channel 264C3 to the community of Reserve as its first full-time aural service. The public interest would clearly be better served by the allotment of a first full-time aural service. Moreover, when the two communities are compared, it becomes obvious that Reserve is a community of greater importance than is Duncan. Reserve is the seat of government and business in Catron County. Therefore, it is crucial that a station be licensed to this greatly underserved community.

5. Accordingly, for the reasons stated above, Acme requests that the Commission

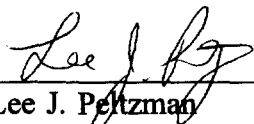
adopt this counterproposal to allot a first channel (Channel 264C3) to Reserve, New Mexico, and to deny the mutually exclusive proposal to allot Channel 264A at Duncan, Arizona. In the event that the Commission allots Channel 264C3 to Reserve, Acme will promptly file an application for construction permit for that channel and, when granted, will immediately construct its station and commence broadcasting.

Respectfully submitted,

ACME ENTERPRISES

SHAINIS & PELTZMAN
2000 L Street, N. W. - #200
Washington, D. C. 20036
202/416-1633

By:



Lee J. Peltzman
Its Attorney

August 18, 1994

ACME ENTERPRISES
BF (New) - Reserve, NM

PETITION FOR RULEMAKING
Engineering Statement

At the request of Acme Enterprises, we have prepared this engineering statement in support of a Petition for Rulemaking which seeks FM Channel 264C3 as a new allocation to Reserve, New Mexico.

The center coordinates of the community of Reserve are specified in the index to the National Atlas of the United States as 33°43'00"N and 108°45'24"W. This location does not meet all of the distance separation requirements of Section 73.207(a) of the Commission's Rules; accordingly, an alternate reference point has been selected at 33°40'00"N and 108°48'00"W.

Exhibit E-1 is a table demonstrating that the proposed reference point (approximately 6.8 kilometers distant from Reserve on an azimuth of 215.9°) is fully spaced to all pertinent facilities, with the exception of a pending rulemaking procedure (RM-8455) for Duncan, Arizona, to which this petition is a counterproposal.

A review of all available records indicates that there are no FM allocations within the county of Catron, of which Reserve is the county seat. Moreover, only one licensed station (KQAZ, 259A, Springerville, NM) and two CP modifications (KTHQ, 223C1, Eagar, NM, and KQZE, 239C, St. Johns, NM) appear to be within 100 kilometers of Reserve. It is also noted that Reserve lies in a valley situated such that distant FM signals would be highly attenuated; in fact, the community appears to be unserved with regard to FM broadcast.

Finally, attention is directed to the facts that the proposed reference

point is elevated over the surrounding terrain, thereby making it suitable for a transmitter site; that the radio path from the reference point to Reserve is unobstructed; and that a Class C3 City Grade signal would easily encompass the Reserve area.

Respectfully submitted,

A handwritten signature in cursive script, reading "Mel Freedman". The signature is fluid and extends to the right with a long, sweeping tail.

Mel Freedman
Engineer for Acme Enterprises

16 August 1994

Mr. Mel Freedman
Hughson, CA

Page 1
Aug 16, 1994

Constraints Study FM Channel 264C3

Title: Acme Enterprises
Reference City: Reserve, NM
Translators Are Not Included
Audit File: fms08164.A03

Latitude: 33-40-00
Longitude: 108-48-00
FCC Database: 940729

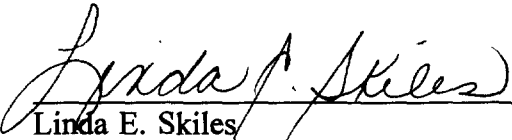
Call	Auth	Licensee Name	Chan	ERP-kW	Latitude	Az-to	Dist	Req
City of License	St	FCC File No.	Freq	EAH-m	Longitude	-from	(km)	(km)
Duncan	ADD	Duncan Community Radi	264A		32-43-12	195.1	108.73	142
		AZ RM-8455	100.7		109-06-12	14.9	-33.27	SHORT
	VACANT		264C2		35-07-09	26.8	181.04	177
Grants		NM	100.7		107-54-08	207.3	4.04	CLOSE
Effective 3-25-93-Reserved for KZNM per D92-140 Docket: 92-140								
KZNM	APP	Don R. Davis	264C3	.250	35-15-09	31.7	207.80	153
Grants		NM BPH-930614ID	100.7	829	107-35-46	212.4	54.80	CLEAR
From Channel 265A per D92-140-Amended 930921								
XHHFM			264C	50.3	31-44-22	134.0	304.94	270
Ciudad Juarez		CH	100.7	7	106-28-49	315.3	34.94	CLEAR
			264C		31-44-22	134.0	304.94	270
Ciudad Juarez		CH	100.7		106-28-49	315.3	34.94	CLEAR

End of Constraints Study FM Channel 264C3

CERTIFICATE OF SERVICE

I, Linda E. Skiles, Office Administrator of the law firm of Shainis & Peltzman, do hereby certify that copies of the foregoing document were mailed this 18th day of August, 1994, to the offices of the following:

Jeffrey D. Southmayd, Esq.
Southmayd & Miller
Suite 400
1220 19th Street, N. W.
Washington, D. C. 20036


Linda E. Skiles